

**UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA**

**DONOVAN MIDDLETON, HARVESTER
NUTRITION, LLC, EDGAR ROJAS, CHRISTINA
SOARES, HERMAN HOURIE, NUTRITION
CASTLE, LLC, BRIGHT FUTURE HOLDINGS,
LLC, VIVIFY, INC., KATHERINA JERAK,
M.G. NUTRITION, LLC, AND WARRIOR
FITNESS & NUTRITION, LLC,**

Plaintiffs,

-vs-

COMPLETE NUTRITION FRANCHISING, LLC,

Defendant.

Case Number: 8:18-CV-115

**DEFENDANT'S MOTION TO DISMISS OR TO COMPEL
MEDIATION OR, ALTERNATIVELY, TO STAY PENDING MEDIATION**

Defendant, Complete Nutrition Franchising, LLC, by its undersigned counsel, Saul Ewing Arnstein & Lehr LLP, respectfully moves this Court pursuant to Federal Rule of Civil Procedure 12(b)(6) to dismiss Plaintiffs Donovan Middleton, Harvester Nutrition, LLC, Edgar Rojas, Christina Soares, Herman Hourie, Nutrition Castle, LLC, Bright Future Holdings, LLC, Vivify, LLC, and Warrior Fitness & Nutrition, LLC's Complaint for failure to satisfy conditions precedent prior to filing suit pursuant to Federal Rule of Civil Procedure 9.

1. Plaintiffs, Donovan Middleton, Harvester Nutrition, LLC, Edgar Rojas, Christina Soares, Herman Hourie, Nutrition Castle, LLC, Bright Future Holdings, LLC, Vivify, LLC, and Warrior Fitness & Nutrition, LLC (together, the "Plaintiffs") filed a complaint (the "Complaint") against Defendant, Complete Nutrition Franchising, LLC ("Complete Nutrition") on March 9, 2018.

2. Plaintiffs' complaint (the "Complaint") includes variations of the following causes of action: breach of contract, breach of the implied covenant of good faith and fair dealing, negligent misrepresentation, fraudulent misrepresentation/fraudulent concealment, violation of the Nebraska Deceptive Trade Practices Act, violation of the Florida Franchise Act, and violation of the Indiana Deceptive Franchise Practices Act.

3. For the reasons set forth in Complete Nutrition's supporting memorandum, filed contemporaneously with this motion, Complete Nutrition moves the Court to dismiss Plaintiffs' claims or to compel mediation or, alternatively, to stay this case pending mediation.

Dated: April 20, 2018

Respectfully submitted,

Complete Nutrition Franchising, LLC, Defendant

By: /s/ Eugene J. Geekie, Jr.

Eugene J. Geekie, Jr. (admitted pro hac vice)
Konstantinos Armiros (admitted pro hac vice)
Thomas A. Laser (admitted pro hac vice)
Saul Ewing Arnstein & Lehr LLP
161 N. Clark Street, Suite 4200
Chicago, Illinois 60601
Phone: (312) 876-7100
Email: eugene.geekie@saul.com
konstantinos.armiros@saul.com
tom.laser@saul.com

and

Erin Ebeler Rolf, No. 23923
Woods & Aitken LLP
301 S 13th Street, Suite 500
Lincoln, Nebraska 68508
Phone: 402-437-8500
Email: eerolf@woodsaitken.com

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing was filed using the CM/ECF system on April 20, 2018, which transmitted the same to all counsel registered to receive service via the same.

/s/ Eugene J. Geekie, Jr.

Eugene J. Geekie, Jr.